FAO 10/2006
BEFORE

HON'BLE DR (MRS) JUSTICE INDIRA SHAH

JUDGMENT & ORDER

This is an appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 against the order dated 06-03-2006 passed by the District Judge, Jorhat in Misc. Case No. 90 of 2005 arising out of T.A. No. 1 of 2005 dismissing the petition filed by the appellants under Order XXII Rule 9 (2) of the Code of Civil Procedure, 1908, accompanied by a petition under Section 5 of the Limitation Act.

2) I have heard Mr. A. Das, learned Counsel appearing for the appellants and also heard Mr. H.K. Baishya, learned counsel appearing on behalf of the respondent.

3) The suit filed by the respondent being T. S. No. 43 of 1996 was decreed in favour of the respondent and against the original defendant Siba Prasad Ghosh (since deceased) preferred an appeal being T.A. No.23 of 2003 on 11-11-2003. The record of the Title Appeal was called for by the District Judge in connection with some inquiry vide letter dated 02-01-2004. The records were sent back on 26-03-2004. The learned Civil Judge stayed the execution of decreed appeal vide order dated 11-05-2004. In the meantime, the appellant, Siba Prasad Ghosh died on 27-02-2004 and the legal representatives of deceased defendant filed an application for substitution on 11-05-2004. The appeal was transferred to the Court of Addl. District Judge, Jorhat and it was re-numbered as Title Appeal No. 1 of 2005. The matter of substitution was heard and it was held that the appeal abated and accordingly, the order of stay of execution of the impugned decree stood vacated.

4) On perusal of the impugned order, it appears that the appellate Court recorded the evidence of appellants and respondent side and held that the appellants failed to satisfy the Court that they were prevented by any sufficient cause for continuing the appeal following the death of their predecessor Siba Prasad Ghosh. Though, the appellants contended that they had filed a petition for substitution on 17-02-2004 but the said petition was missing from the records. They failed to prove that they had filed any such petition. They also failed to examine the conducting lawyer who drafted the petition to prove their contention. The Bench Assistant was examined and did not support the contention of the appellants. I find nothing to interfere with the impugned order.

5) This appeal being devoid of merits and accordingly, it is dismissed and disposed of. Return the LCRs along with a copy of the order to the learned Court below forthwith.